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No. 00-1091

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

ILLINOIS,

Petitioner,

v.

EDWARD CARLSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS APPELLATE COURT'S DECISION IN *CARLSON* IS CONSISTENT WITH THE PRECEDENT ESTABLISHED BY THIS COURT.

The Illinois Appellate Court's decision in *People v. Carlson*, 313 Ill. App. 3d 447, 729 N.E.2d 858 (1st Dist. 2000) is consistent with the precedent established by this Court. In *Florida v. J.L.*, this Court held that an anonymous tip that a person is carrying a gun, without more, is insufficient to justify a police officer's stop and frisk of that person. 529 U.S. __, 120 S. Ct. 1375 (2000). In this case, a police officer seized Edward Carlson (Carlson) at gunpoint with solely an anonymous tip as the justification. Following *J.L.*, which was decided subsequent to the trial court's denial of Carlson's motion to quash arrest, the Illinois Appellate Court held the tip was insufficient to justify the seizure and ordered the evidence suppressed.

In *Carlson*, the police acted solely on the basis of a tip from an unknown and unaccountable informant. When the officer arrived at the scene, Carlson was talking on a pay phone and he had only that phone in his hands. (Volume 1, Common Law Record, pg. 24). Carlson was violating no laws. (V1, R. 12). Despite no observable criminal conduct, the officer immediately ordered Carlson to the ground at gunpoint. (V1, R. 26). The officer's actions were based solely on the information he received in the dispatch that Carlson "may" have a weapon on him or in his car. (V1, R. 26). Any additional evidence or information gathered by the officer occurred only after Carlson was ordered to the ground at gunpoint.

The undisputed facts show the officer observed nothing which would have led him to believe Carlson carried a weapon. Carlson made no threatening or unusual movements. He did not attempt to flee in response to the officer's arrival. Carlson was simply talking quietly on the telephone. (V1, R. 12). While the tip apparently enabled the police to identify Carlson, it did not demonstrate any reliability in its assertion of illegality. The State presented no recording of the telephone tip and no corroboration of any illegality. It never established the identity or reliability of the caller. Furthermore, the tipster was uncertain whether Carlson even had a gun. The officer testified the dispatch indicated Carlson "may" have a weapon in his possession or in his car, with absolutely no indication that this information came from an individual with any personal knowledge. (V1, R. 23).

Effectively, Petitioner wants this Court to create a general firearm exception regarding searches performed pursuant to anonymous tips. The Court rejected precisely this argument in *J.L.* 529 U.S. at __, 120 S. Ct. at 1381. Petitioner cites no facts that distinguish the present matter from *J.L.*, a matter decided by this Court only last term. Petitioner provides no basis for this Court to reconsider and reverse its ruling in *J.L.* Similarly, Petitioner fails to distinguish this case from *People v. Lawson*, an Illinois case cited by the First District Appellate Court which stands for the unremarkable proposition that the source and reliability of dispatches upon which an officer acts must be established. 298 Ill. App. 3d 997, 700 N.E.2d 125 (1st Dist. 1998).

The Fourth Amendment protects citizens from unreasonable seizures and searches. *U.S. Const. amend IV.* Warrantless searches and seizures are per se unreasonable. Petitioner cites the case of *City of Indianapolis v. Edmonds*

in its efforts to provide a lawful justification for the seizure and search of Carlson. *Petition, page 8. Edmonds* dealt with a vehicle checkpoint. __ U.S. __, 121 S. Ct. 447 (2000). At no point does *Edmonds* hold that an anonymous tip, without more, justifies a warrantless seizure and search of a selected individual at gunpoint. *Edmonds* certainly does not condone or justify a search absent reasonable suspicion or probable cause. Given this holding, *Edmonds* is inapplicable to the present case and provides no justification for the officer's actions in regard to Carlson.

Petitioner attempts to distinguish this matter from *J.L.* by arguing the anonymous tip came from a friend or roommate of Carlson's girlfriend. *Petition, page 7.* Previously, Petitioner asserted the source of the anonymous tip was Carlson's girlfriend. (Supplemental Common Law Record, pg. 22-23). The source of the alleged tip is not a matter of record. Petitioner misleads this Court when it suggests the identity of the anonymous tipster was established. Petitioner attempted to make this same argument in front of the First District Appellate Court and that Court criticized the Petitioner for mischaracterizing the record. *Carlson*, 313 Ill. App. 3d at 449, 729 N.E.2d at 860.

II.

PETITIONER WAIVED BOTH ITS *TERRY* AND "LIFE SAVING/PUBLIC SAFETY" ARGUMENTS BY FAILING TO PROPERLY PRESERVE AND ARGUE THEM IN THE ILLINOIS COURTS.

Petitioner waived both its *Terry* and "life saving" arguments by failing to properly preserve them. Petitioner argues that the trial court ruled the seizure and search was a "life saving/public safety mission" by the officer, not a criminal evidence gathering mission. *Petition, page 8.* The trial court never distinguished or noted a primary purpose for the seizure and search. It simply ruled the officer's actions were reasonable. (V1, R. 38). Petitioner failed to advance its "life saving" theory regarding the purpose for the armed seizure and search of Carlson in any previous pleading to any court. As such, it did not properly preserve the issue for review on the merits by this Court.

Similarly, Petitioner did not argue *Terry* in the trial court. It did not mention *Terry* as a justification for the seizure and search in its written brief to the Illinois Appellate Court. (Supp. R. 3-4). In fact, it did not raise *Terry* until after oral arguments began in the Appellate Court. *Id.* Respondent argued then and continues to maintain that by failing to include its *Terry* argument within its written brief, Petitioner waived the issue. (Supp. R. 12).

III.

THIS COURT, IN *J.L.*, REJECTED PETITIONER'S POLICY ARGUMENTS RELATING TO SEARCHES PERFORMED PURSUANT TO ANONYMOUS TIPS WHICH ALLEGE THE POSSESSION OF FIREARMS.

This Court established in *J.L.* that an anonymous tip lacking any indicia of reliability does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm. 529 U.S. at __, 120 S. Ct. at 1381. In arriving at its decision, the Court acknowledged the dangers of firearms and the threat that armed criminals pose to public safety. *Id.* at __, 120 S. Ct. at 1379. Petitioner ignores this holding and persists in arguing that a general "firearm exception" should be crafted which imposes no reliability testing because of the dangers of guns. In rejecting this argument in *J.L.*, this Court ruled that such an exception would go too far in subjecting citizens to intrusive, embarrassing police searches simply on the basis of an anonymous call. *Id.* at __, 120 S. Ct. at 1381. The Fourth Amendment is not so easily satisfied.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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